



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP - 1 2017

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. George Brikho, Jr.
c/o Mr. George Curran
Attorney
Kotz Sangster Wysocki, P.C.
400 Renaissance Center, Suite 3400
Detroit, Michigan 48243

gcurran@kotzsangster.com

Consent Agreement and Final Order In the Matter of Edenz Gardening Center
Lapeer, Inc., Docket Number **FIFRA-05-2017-0052**

Mr. Curran:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 1, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$17,160 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the docket number is written on both the payment notification letters and on the checks. Payment installments are due by the dates as described in paragraph 33.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No. FIFRA-05-2017-0052
)	
Edenz Gardening Center Lapeer, Inc.)	Proceeding to Assess a Civil Penalty
Lapeer, Michigan,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Edenz Gardening Center Lapeer Inc. (Edenz Gardening), a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. A “person” is any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).

16. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent has been a “producer” and a “registrant” as those terms are defined at Section 2(w) and (y) of FIFRA, 7 U.S.C. § 136(w) and (y), at all times relevant to this CAFO.

19. Respondent owned or operated a place of business located at 560 Oak Street, Lapeer, Michigan during calendar year 2015.

20. Respondent’s place of business located at 560 Oak Street, Lapeer, Michigan has been an “establishment” as defined at Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3 at all times relevant to this CAFO.

21. On December 2, 2015, inspectors employed by Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Lapeer, Michigan.

22. During the December 2, 2015 inspection, the inspectors collected shipping records and observed and photographed the product “Aza Maximum 3%.”

23. The label of “Aza Maximum 3%” observed by MDARD and documented in photographs collected on December 2, 2015, contained the following claims or statements:

- a. "ACTIVE INGREDIENT: Azadirachtin..... 3%."
- b. "DIRECTIONS FOR USE: For the most effective control, apply when pests are expected to appear or as soon as possible after they appear and are in immature stages."
- c. "Foliar Application – Mix 0.5 to 1 oz. per gallon of water depending on pest levels."
- d. "Soil Drench - ... With high insect pressure, make applications every 5 – 6 days."

24. Aza Maximum 3% is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about February 6, 2015, Respondent distributed or sold one container of "Aza Maximum 3%," sales receipt number 8275.

26. On or about February 14, 2015, Respondent distributed or sold one container of "Aza Maximum 3%," sales receipt number 8384.

27. On or about April 2, 2015, Respondent distributed or sold one container of "Aza Maximum 3%," sales receipt number 9059.

28. On or about August 11, 2015, Respondent distributed or sold one container of "Aza Maximum 3%," sales receipt number 10453.

29. On or about October 10, 2015, Respondent distributed or sold one container of "Aza Maximum 3%," sales receipt number 11143.

30. Aza Maximum 3% was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on the dates in paragraphs 25 through 29 above.

31. Respondent's distribution or sale of the unregistered pesticide Aza Maximum 3%

constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

32. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$17,160. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

33. Respondent must pay a \$17,160 civil penalty in three installments with interest as follows: \$3,000 within 30 days of the effective date of this CAFO; \$7,139 within 180 days of the effective date of this CAFO; and \$7,116.38 within 365 days of the effective date of this CAFO.

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment #1	Within 30 days of effective date of CAFO	\$3,000	\$3,000	\$0
Payment #2	Within 180 days of effective date of CAFO	\$7,139	\$7,080	\$59
Payment #3	Within 365 days of effective date of CAFO	\$7,116.38	\$7,080	\$36.38

Respondent must pay the installments by sending a cashier's or certified check, payable to "Treasurer, United States of America," by U.S. Postal Service first class mail to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The address for sending the check by express mail is:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note "Edenz Gardening Center Lapeer, Inc." and the docket number of this CAFO.

34. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Deborah Carlson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay any installment payment as set forth in paragraph 33, above, the entire balance of the civil penalty and any amount required by paragraph 37, below,

shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may refer the delinquency to the Attorney General to recover any unpaid penalty with interest by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

41. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

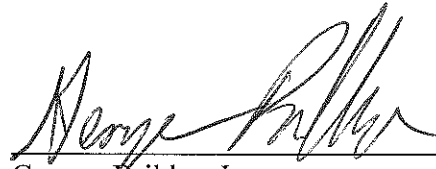
42. The terms of this CAFO bind Respondent, its successors and assigns.

43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees, in this action.
45. This CAFO constitutes the entire agreement between the parties.

Edenz Gardening Center Lapeer, Inc., Respondent

8-11-17
Date


George Brikho, Jr.
Owner
Edenz Gardening Center Lapeer, Inc.

In the Matter of:
Edenz Gardening Center Lapeer, Inc.
Docket No. FIFRA-05-2017-0052

United States Environmental Protection Agency, Complainant

Aug. 30, 2017
Date

Brigid Lowery
Brigid Lowery
Acting Director
Land and Chemicals Division

In the Matter of:
Edenz Gardening Center Lapeer, Inc.
Docket No.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

September 1, 2017
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Edenz Gardening Lapeer, Inc.
Docket Number: **FIFRA-05-2017-0052**

CERTIFICATE OF SERVICE

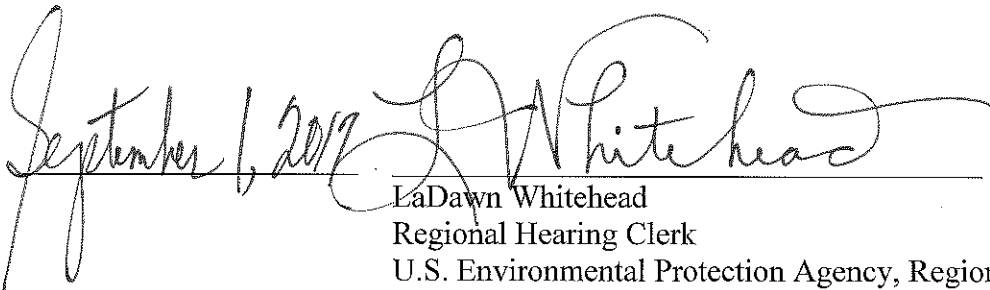
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2017-0052**, which was filed on 9/1/2017, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent: George Curran
gcurran@kotsangster.com

Copy by E-mail to
Attorney for Complainant: Deborah Carlson
carlson.deboraha@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 1, 2017


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5